

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

Robert Frost, Jr.,)	C/A No. 8:05-723-JFA-BHH
)	
Plaintiff,)	
v.)	ORDER
)	
George T. Hogan, Warden,)	
in his individual and official capacity,)	
)	
Defendant.)	
_____)	

This matter is before the court for review of the Magistrate Judge's Report and Recommendation made in accordance with 28 U.S.C. § 636(b)(1)(B) and Local Civil Rule 73.02.

The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight, and the responsibility to make a final determination remains with the court. *Mathews v. Weber*, 423 U.S. 261 (1976). The court is charged with making a *de novo* determination of those portions of the Report and Recommendation to which specific objection is made, and the court may accept, reject, or modify, in whole or in part, the recommendation of the Magistrate Judge, or recommit the matter to the Magistrate Judge with instructions. *See* 28 U.S.C. § 636(b)(1).

The *pro se* plaintiff is an inmate with the South Carolina Department of Corrections

(“SCDC”). The plaintiff brings this action pursuant to 42 U.S.C. § 1983 apparently complaining of second-hand tobacco smoke.

In a detailed Report and Recommendation, the Magistrate Judge suggests that the plaintiff has not exhausted his administrative remedies. The Magistrate Judge recommends that the complaint be dismissed without prejudice.

The plaintiff was advised of his right to file objections to the Report and Recommendation, which was entered on the docket on March 30, 2005. The plaintiff filed objections to the Report on April 12, 2005, which this court has reviewed *de novo*.

After carefully reviewing the applicable law, the record in this case, and the Report and Recommendation, and the objections thereto, the court agrees that the plaintiff has not exhausted his administrative remedies as required by 42 U.S.C. § 1997e(a), and thus he is precluded from bringing this § 1983 action. Accordingly, the Report and Recommendation is incorporated herein by reference, the objections are overruled, and this action is dismissed without prejudice and without issuance and service of process.

IT IS SO ORDERED.

April 27, 2005
Columbia, South Carolina

s/ Joseph F. Anderson, Jr.
United States District Judge